

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

SHAWNTA BROWN,

Petitioner

v.

//

CIVIL ACTION NO. 1:05CV109
(Judge Keeley)

DOMINIC GUTIERREZ,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On July 26, 2005, pro se petitioner, Shawnta Brown, ("Brown") filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The Court referred this matter to United States Magistrate Judge James E. Seibert for initial screening and a report and recommendation in accordance with Local Rule of Prisoner Litigation 83.09.

On May 31, 2007, Magistrate Judge Seibert issued a Report and Recommendation recommending that Brown's petition be denied. The magistrate judge determined that Brown had failed to exhaust his administrative remedies and had failed to assert a futility argument in defense of his failure to exhaust. Further, Magistrate Judge Seibert concluded that, even if Brown had exhausted his administrative remedies, the Bureau of Prisons ("BOP") properly utilized Program Statement 5162.04, Categorization of Offense, in its determination that Brown was not eligible for early release. Moreover, the magistrate judge noted that, because Brown has been released from incarceration, the petition is moot.

ORDER ADOPTING REPORT AND RECOMMENDATION

Accordingly, Magistrate Judge Seibert recommended that Brown's § 2241 petition be denied.

The Report and Recommendation also specifically warned that failure to object to the report and recommendation would result in the waiver of any appellate rights on this issue. Nevertheless, Brown failed to file any objections.¹

Additionally, on June 6, 2007, the United States Postal Service returned the mail containing the copy of the report and recommendation sent to Brown marked "undeliverable". On July 26, 2005, the Clerk of Court provided Brown with a copy of "Notice of General Guidelines for Appearing Pro Se in Federal Court" which provides that:

Current Address: Keep the Court and opposing counsel, if any, advised of your most current address **at all times**. Failure to do so may result in your action being dismissed without prejudice.

Given that Brown has been released from prison, has failed to prosecute his claim by keeping the Court advised of his current address, and has not objected to the report and recommendations, the Court **ADOPTS** the Report and Recommendation in its entirety,

¹ Brown's failure to object to the Report and Recommendation not only waives his appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

ORDER ADOPTING REPORT AND RECOMMENDATION

DENIES the Petition for Writ of Habeas Corpus (docket no. 1), and **ORDERS** the case **DISMISSED WITH PREJUDICE** from the Court's docket.

The Clerk is directed to mail a copy of this Order to the pro se petitioner, certified mail, return receipt requested, at his last known address and to transmit copies of this Order to counsel of record.

Dated: June 20, 2007

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE